



WEB COPY

AS No. 943 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 943 of 2024

AND

CMP NO. 25312 OF 2024

D.R.Venkataramanaiah
S/o. Late Narasiah,
Old No.8, New No.17,
Hyder Garden First Street,
Perambur, Chennai 012.

..Appellant(s)

Vs

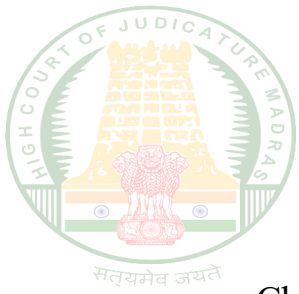
D.R.Venkatanarayana
S/o. Late.Narasiah,
No. 24/13, State Bank Officers Colony,
2nd Street, Jamaliya, Chennai 012

..Respondent(s)

First Appeal filed under Section 96 CPC to set aside the judgement and decree dated 12.04.2024 passed in O.S.No.2240 of 2020 on the file of the XV Additional City Civil Court, Chennai.

For Appellant(s): Mr.P.Raja

For Respondent(s): Mr.P.Satheesh Kumar



JUDGMENT
(delivered by N.Sathish Kumar J.)

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Challenging the judgement and decree dated 12.04.2024 passed in O.S.No.2240 of 2020 on the file of the XV Additional City Civil Court, Chennai, the appellant/defendant has filed the present appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The brief case of the plaintiff is as follows:

The plaintiff is the younger brother of the defendant. According to the plaintiff, his parents had six children viz. plaintiff, defendant and four other daughters. His father died in the year 1976. His mother, out of her own savings and also funds provided by her sisters purchased the suit property. After graduation, since the plaintiff was getting his sisters married and was taking care of the family, the suit property was settled in favour of the plaintiff. The suit property had five portions, in which, three portions were enjoyed by the plaintiff's family including his mother. Even after settlement, the plaintiff allowed the defendant to stay in one portion of the suit property. After 2004, as the portions were not in a livable condition, the plaintiff had gone to some other place. After arranging the marriage of the daughters, when the plaintiff made an application for mutation, the defendant objected the same and then, he came to



know that the defendant was claiming right over the property. Hence, the plaintiff sent a legal notice (Ex.A10) dated 02.02.2016 to the defendant, who in turn, sent a reply notice (Ex.B2). Hence, the plaintiff filed a suit for declaration and recovery of possession.

4. The brief case of the defendant is as follows:

The defendant is in possession of the suit property consisting of house from 1967 to till date. According to him, the plot was originally allotted to one Samuel by the Depressed Class Cooperative House-site Society Limited for monthly instalments. As the said Samuel could not pay the monthly instalments, he requested the father of the parties to pay the same. Thereafter, the defendant also paid the instalments till the death of his father. The defendant also put up a construction during the lifetime of his father. Even after the death of his father, the defendant continued to pay the monthly instalment till 1980. After the payment of the entire amount, the property was registered in the name of the mother. According to the defendant, his mother was a house wife. Further the expenses of the marriage of the sisters were also taken care of by the defendant. His mother was only a house wife she had no source of income and the defendant had constructed the house and his sisters were also living with him. After the death of his father, her mother had suffered stroke and was bedridden. The plaintiff, taking advantage of the illness of the mother, took her to the



Registrar Office and transferred the property in his favour and therefore, the settlement deed is not valid. Hence, opposed the suit.

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5. Based on the aforesaid pleadings, following issues were framed by the trial Court:

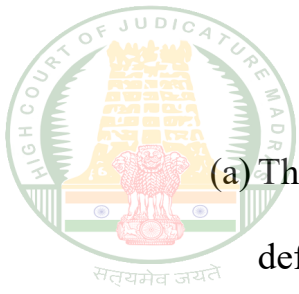
- (a) Whether the plaintiff is entitled for declaration as prayed for?*
- (b) Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?*
- (c) To any other relief and cost the plaintiff is entitled?*

6. On the side of the plaintiff, the plaintiff examined himself as PW1 and marked thirteen exhibits. On the side of the defendant, the defendant examined himself as DW1 and marked three exhibits.

7. Based on the evidence and materials available on record, the trial Court answered the issue in favour of the plaintiff and decreed the suit.

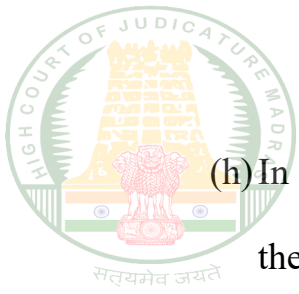
8. Aggrieved over the same, the defendant has filed the present appeal.

9. The contentions made by the learned counsel appearing for the appellant/defendant are as follows:



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- (a) The plot was originally allotted to Samuel, who was a friend of the defendant's father, on monthly instalments.
- (b) As Samuel could not pay the monthly instalments, the defendant's father paid the same and that apart, the defendant was also contributing his father in paying the monthly instalment till 1980.
- (c) When the defendant's father died in 1976, as an elder member of the family, the document was registered in the mother's name. Hence, according to the defendant, the sale deed was registered in a fiduciary capacity in the name of the mother.
- (d) Further, as per the sale deed (Ex.A1), it is clear that only the vacant site was allotted and therefore, the claim of the plaintiff that a building was already available in the property cannot be accepted. According to the defendant, he has put up the construction.
- (e) The mother had no independent income to purchase the property and there is no evidence to show that she had sources to purchase the property or the money has been provided by her sister.
- (f) All these facts clearly show that the consideration was mainly paid by the father of the parties as well as the defendant.
- (g) Further, once the consideration was paid and as the elder member of the family it has to be inferred that the property was purchased in the name of the mother in the fiduciary capacity and therefore, all of them are entitled to equal share.

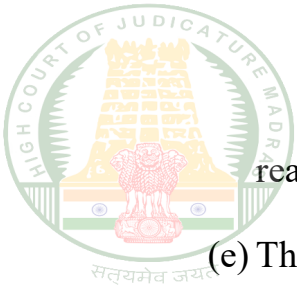


(h) In support of his contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in *Marcel Martins Vs. M.Printer and Others*¹.

10. The contentions made by the learned counsel for the respondent/plaintiff are as follows:

- (a) The sale deed in the name of the mother, which was marked as Ex.A1, clearly shows that the property has been purchased by the mother of the parties and in fact, allotment was made in the year 1967 itself.
- (b) Therefore, the contention that the plot was originally allotted to Samuel and later, instalments were made by the defendant cannot be countenanced for any other reason.
- (c) That apart, the plaintiff and the defendant completed their graduation in the same year and therefore, the contention that the defendant contributed for purchase of the property is highly improbable. Further absolutely there is no evidence to show that the defendant was paying the instalments till 1980. Further, there is no evidence to show that the defendant had put up the construction.
- (d) In the earlier suit filed by the defendant for injunction, one of the issues is with regard to the validity of the settlement deed executed by the mother and that issue was answered in favour of the respondent/plaintiff, which

¹(2012) 5 SCC 342



reached finality.

(e) That apart, the suit filed by the appellant for partition was also rejected, which has also reached finality.

(f) Hence, now the contention that the defendant has right over the suit property cannot be accepted.

11. Heard the learned counsel on both sides and perused the materials available on record.

12. In light of the above submissions, the points that arise for consideration in this appeal are as follows:

- i. *Whether the suit property is purchased only out of the contribution made by the father of the parties and also the defendant viz. appellant herein?*
- ii. *Whether the plaintiff is entitled for declaration and recovery of possession as prayed for?*

13. The suit has been laid for declaration and for recovery of possession on the ground that the suit property has been originally purchased by the mother of the plaintiff from the Depressed Class Cooperative House-site Society Limited by virtue of the sale deed (Ex.A1) dated 29.02.1980.



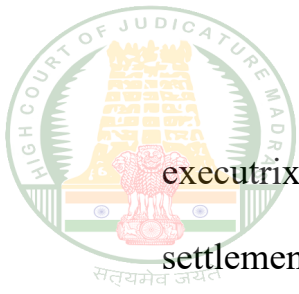
14. It is the specific contention of the plaintiff that the said purchase was made by his mother in her individual capacity out of her own savings and contribution made by her sister. Whereas, the case of the defendant is that the property was originally allotted to one Samuel on instalment basis and as the said Samuel could not pay the instalments, he requested the father of the parties to pay the instalments. Accordingly, the defendant was also contributing the payment to clear the monthly instalments and he was paying the instalments till 1980. To countenance the stand of the defendant that he was paying the contribution till 1980, absolutely there is no piece of evidence whatsoever available. If really the monthly instalments were paid by the defendant as alleged in the written statement, the receipts for such payments would have been filed. However, no documents were filed.

15. Further, the contention of the defendant that the property was originally allotted to Samuel and later, the same was registered in favour of the mother of the parties, was also not established by any piece of evidence. Whereas, when the sale deed (Ex.A1) is carefully perused, the aforesaid contention of the defendant cannot be countenanced for a simple reason that the sale deed (Ex.A1) was executed by the Depressed Class Cooperative House-site Society Limited in favour of the mother of the parties herein, which clearly show that the property was originally allotted in the name of the mother of the parties in the year 29.01.1967 and she was permitted to pay the value thereof in



instalment and the price of the plot was fixed at the rate of Rs.1,461/- and the very sale deed (Ex.A1) also clearly recorded the fact the entire sale consideration was paid by the mother of the parties, pursuant to which, the sale came to be executed on 29.02.1980 with regard to the vacant site. Therefore, the contention that only out of the contribution made by his father or the defendant, the sale came to be registered in the name of the mother has not been established.

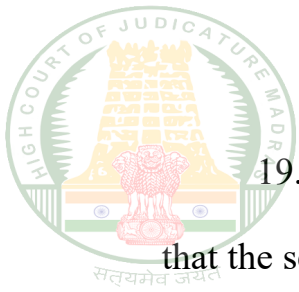
16. The other contention raised by the defendant that he has constructed the house in the suit property, for which, absolutely there is no piece of evidence whatsoever to prove at least the construction was effected by him. If really the construction was made by the defendant, necessary building plan approval and relevant documents ought to have been filed. No documents whatsoever filed in this regard, whereas, the settlement deed (Ex.A2), when carefully perused, it is seen that the mother of the parties has executed the same in respect of the suit property in favour of the plaintiff on 16.02.2004. The very execution of the settlement deed (Ex.A2) is not disputed. The executrix mother also sent a legal notice dated 10.09.2004, wherein, she has clearly stated that she has executed the settlement deed (Ex.A2) in favour of the plaintiff. The legal notice was received by the defendant as early as in 2004, for which, the reply notice has also been sent by the defendant under Ex.B2 stating that the suit property was purchased out of his contribution. Therefore, once the



executrix has admitted the execution, now, it is improbable to contend that settlement deed (Ex.A2) was executed, while she was unwell and suffered stroke.

17. It is further to be noted that the recitals of the settlement deed (Ex.A2) clearly shows that the mother of the parties has specifically recited in the document that she has put up constructions viz. flats in the suit property. Further, the reason for excluding the other members of the family has been clearly stated in the settlement deed (Ex.A2).

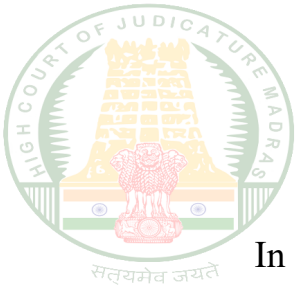
18. It is also relevant to note that the defendant has already filed the suit in O.S.No.1562 of 2016 for not evicting him from the property, wherein, one of the issues was relating to the validity of the settlement deed (Ex.A2). The trial Court in that suit found the said issue in favour of the plaintiff and held that the settlement deed (Ex.A1) is validly executed by the mother of the parties and the judgment reached finality. It is also admitted in the cross-examination that the defendant had already filed a partition suit claiming the share in the suit property and that suit was also rejected at the SR stage itself. Therefore, once the suit filed by the defendant for partition is rejected and also reached finality, now, the contention that the property was purchased out of the contribution made by the defendant and his father cannot be countenanced. The main title deed clearly shows that the property had been purchased by the mother of the parties and the entire consideration has been made by her.



19. Considering the aforesaid aspect and further, considering the fact that the settlement deed (Ex.A2) was already known to the defendant in the year 2004 and the validity of the settlement deed (Ex.A2) is already decided in another suit filed by the defendant as refereed above and the partition suit filed by the defendant was also rejected, so ends the matter.

20. We are of the view that without any evidence to substantiate the pleadings, merely being the brother was in possession of the property cannot set up adverse title to the property and it is not the case of the defendant that he has perfected title over the property. Whereas, the defendant resisted the suit only on the ground that the property was not purchased out of the consideration paid by his mother, but, by himself contributing along with his father, which has not been established. That being the position, the defendant cannot resist the suit.

21. Though the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in *Marcel Martins (supra)*, the facts of that case clearly establish that the transaction was in fiduciary capacity and only on the particular facts, the Hon'ble Supreme Court has come to the conclusion and therefore, without any evidence and proved facts mere inference cannot be drawn on the submission of the learned counsel. Hence, the judgment of the Hon'ble Supreme Court relied on by the learned counsel for the appellant/defendant is not applicable to the facts of the case on hand. Accordingly, the points are answered.

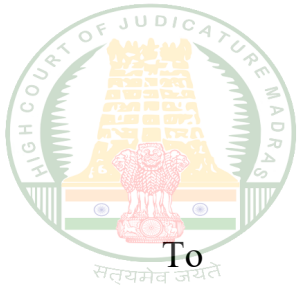


In the result, this first appeal is dismissed confirming the judgement and decree dated 12.04.2024 passed in O.S.No.2240 of 2020 on the file of the XV Additional City Civil Court, Chennai. Considering the relationship between the parties, there shall be no order as to costs. Connected C.M.P. is closed.

(N.S.K.,J.) (M.J.R.,J.)
08-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

nsd

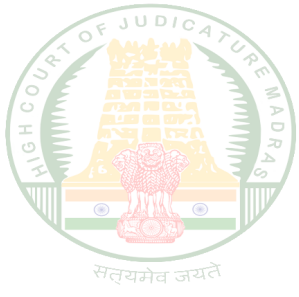


To

WEB COPY

1.The XV Additional Judge,
XV Additional City Civil Court, Chennai.

2.The Section Officer,
V.R. Section, Madras High Court.



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AS No. 943 of 2



**N.SATHISH KUMAR J.
AND
M.JOTHIRAMAN J.**

nsd

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